

1 The Honorable John C. Coughenour
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The Honorable John C. Coughenour
Noted for December 7, 2001

The Honorable John L. Weinberg, Magistrate Judge

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AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LIFE HAS MEANING a/k/a MARY
ELIZABETH WILLIAMS,

Plaintiff,

) No. C00-1998C (BJR)

) WTO Proceeding

)
CITY OF SEATTLE, PAUL SCHELL, NORM
STAMPER, JOHN DOE #1, JOHN DOE #2,
JOHN DOE #3, JOHN DOE #4, JOHN DOE
#5, JOHN DOE #6, JOHN DOE #7, JOHN
DOE #8, JOHN DOE #9, JOHN DOE #10,
JOHN DOE #11, JOHN DOE #12, JOHN
DOE #13, JOHN DOE #14, JOHN DOE #15
and JOHN DOE #16,

) DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

) Noted for December 7, 2001

Defendants

I. RELIEF REQUESTED

The defendants, by and through counsel, respectfully request an order dismissing them from the plaintiff's Complaint.

DEFENDA
SUPPORT
JUDGMEN

(SFC3DATA\CLIENTS)

CV 00-01998 #00000042

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II. FACTS RELEVANT TO MOTION

This is a civil rights action arising out of the World Trade Organization ministerial conference held in Seattle, Washington in late 1999. The plaintiff's allegations are outlined in her Amended Complaint.¹ In short, she alleges that on November 30, 1999, she was assaulted by an unknown officer while attempting to form a blockade around the Convention Center.² She also alleges that on the afternoon of December 1, 1999, she was struck in the eye with a "rubber bullet" by an unknown officer.³

The plaintiff filed her original Complaint in November⁴ In addition to the thousands of documents and numerous persons made available for depositions, the plaintiff also had at her disposal discovery in all the other WTO litigation, as the cases were consolidated for discovery⁵ The discovery cutoff in this case was October 15, 2001⁶ The deadline for motions related to discovery was September 17, 2001⁷ Despite this, the plaintiff has made no effort to seek leave to amend her complaint or to add individual defendants⁸

On October 29, 2001, the Honorable Barbara Jacobs Rothstein issued an Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment and Denying Plaintiffs' Cross-Motion for Summary Judgment.⁹ This order disposes of the issues related to the City of Seattle, Paul Schell and Norm Stamper in this case.

¹ A copy of the plaintiff's Amended Complaint is attached to the Declaration of Blake Dias as Exhibit 1.

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⁴ See Dias Declaration.

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⁹ A copy of this Order is attached to the Declaration of Blake Dias as Exhibit 2 for the Court's reference.

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 2**

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III. EVIDENCE RELIED UPON

This motion is based on the Declaration of Blake Dias and the records and files contained herein

IV. ISSUES PRESENTED

1. Whether Defendants City of Seattle, Paul Schell and Norm Stamper should be dismissed from the case pursuant to the October 29, 2001 Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment and Denying Plaintiff's Cross-Motion for Summary Judgment?

2 Whether the "John Doe" defendants should be dismissed from the lawsuit where the plaintiff has had ample opportunity for discovery, where the plaintiff has not named any additional individual defendants, and where the deadline for doing so has long since passed?

3 Whether the plaintiff's claim for Strict Liability should be dismissed where no defendant is a manufacturer and where the plaintiff cannot introduce any competent evidence that non-lethal weapons are "ultrahazardous" or "abnormally dangerous?"

V. AUTHORITY AND ARGUMENT

A. DEFENDANTS CITY OF SEATTLE, PAUL SCHELL AND NORM STAMPER SHOULD BE DISMISSED.

With respect to a claim against the Mayor or the Chief of Police, a supervisor may be liable under 42 U.S.C. Section 1983 where he directs a subordinate to violate a person's constitutional rights or where he acquiesces in a subordinate's actions. See Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 680 (9th Cir. 1984), Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293-4 (3rd Cir. 1997). Here, there is absolutely no evidence the Mayor or the Chief of Police directed a subordinate to violate the plaintiff's rights or

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 3**

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1 acquiesced in a subordinate's actions. Moreover, the Court has already ruled that the
 2 Mayor and Chief were acting in their constitutional authority. Accordingly, the plaintiff's
 3 claims against the Chief of Police and the Mayor must be dismissed.

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 5 The leading case on municipal liability under § 1983 is Monell v. Dept. of Social
 6 Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

7 In Monell, . . . we decided that a municipality can be found liable under § 1983
 8 only where the municipality itself caused the constitutional violations at issue.
 9 Respondeat superior vicarious liability will not attach under § 1983. It is only
 10 when the execution of the government's policy or custom inflicts the injury
 11 that the municipality may be held liable under § 1983. Thus our first inquiry in
 12 any case alleging municipal liability under § 1983 is the question of whether
 13 there is a direct causal link between the municipality or custom, and the alleged
 14 constitutional deprivation.

15 City of Canton, Ohio v. Harris, 489 U.S. 378, 385, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). A
 16 municipality may not be held liable under § 1983 merely because the plaintiff has suffered a
 17 deprivation of federal rights at the hands of a municipal employee Bryan County
 18 Commissioners v. Brown, 520 U.S. 397, 117 S.Ct. 1382, 1389, 137 L.Ed.2d 626 (1997).
 19 Instead, the plaintiff must identify a municipal policy or custom which itself caused the
 20 plaintiff's injury Id. at p. 1388. The existence of a policy or custom for purposes of a
 21 constitutional action cannot be established solely on the occurrence of a single incident of
 22 unconstitutional action by a non-policymaking employee Oklahoma City v. Tuttle, 471 U.S.
 23 808, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985), Davis v. Ellensburg, 869 F.2d 1230 (9th Cir.
 24 1989). Of course, absent a constitutional violation by the individual officer there can be no
 25 municipal liability City of Los Angeles v. Heller, 475 U.S. 796, 799, 89 L.Ed.2d 806, 106 S.Ct.
 26 1571 (1986)

DEFENDANTS' MEMORANDUM IN
 SUPPORT OF MOTION FOR SUMMARY
 JUDGMENT - 4

With respect to the plaintiff's claims against the City of Seattle, they also must be dismissed Plaintiff has set forth no facts, nor can she, establishing an official policy or custom on the part of the City of Seattle to support a claim of liability under § 1983 Moreover, even if a policy or custom is unearthed by plaintiff, she is unable to make the requisite causal showing between the municipal policy and the alleged wrongdoing by the officers sufficient to support a constitutional claim under § 1983 Finally, the Court has already ruled in favor of the City of Seattle on these issues

B. THE "JOHN DOE" DEFENDANTS SHOULD BE DISMISSED

John Doe defendants are not favored in this Circuit See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir 1980) A John Doe defendant will not be dismissed until the plaintiff has had opportunity for discovery to amend his Complaint and name individual defendants Id. Here, the plaintiff has had ample opportunity for discovery The discovery deadline and the deadline for joining additional parties have both expired There is no excuse for the plaintiff's failure to name individual defendants Her claims against "Unknown Seattle Police Officers" should also be dismissed Id.

C. THE PLAINTIFF'S STRICT LIABILITY CLAIMS SHOULD BE DISMISSED

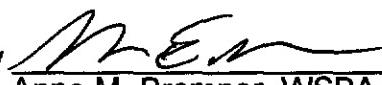
Assuming there are any defendants left in this lawsuit at the end of the present motion, the plaintiff's claim for strict liability is properly dismissed Strict liability attaches only to the product's manufacturer RCW 7.72 et seq. The plaintiff produced no evidence, nor can she, that any of the defendants are manufacturers Second, the plaintiff produced no evidence, nor can she, that the non-lethal weapons at issue are "ultrahazardous" or "abnormally dangerous" Finally, firearms and ammunitions "shall not be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury

DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 5

1 posed by its potential to cause serious injury, damage, or death when discharged." RCW
2 7.72.030(1)(a).

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4 DATED this 13th day of November, 2001

5 STAFFORD FREY COOPER

6
7 By 
8 Anne M. Bremner, WSBA # 13269
9 Blake E. Dias, WSBA # 28169
Attorneys for Defendants

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DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 6